IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.1327 of 2007

Sudalaimani .. Petitioner

Vs

1. The State of Tamil Nadu
   rep. by the Secretary to Government
   Department of Prohibition and Excise
   Fort St. George, Chennai-600 009.

2. The Commissioner of Police
   Greater Chennai
   Office of the Commissioner of Police
   Egmore, Chennai.

3. The Inspector of Police
   R-4 Pondy Bazaar Police Station
   Chennai. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

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For Petitioner : Mr.R.Diwakaran
For Respondents: Mr.N.R.Elango
Addl. Public Prosecutor

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O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the detenu - Sudalaimani, son of Perumal Nadar, as the said authority arrived at the subjective satisfaction that the said detenu is a Goonda and he has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. Challenging the abovesaid detention, the detenu has come forward with the present Habeas Corpus Petition seeking a writ of habeas corpus to call for the records pertaining to the detention order passed against him by the second respondent in Proceedings No.343/BDFGISSV/07, dated 17.7.2007, set aside the same and to direct the respondents to produce the body of the detenu, now detained at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

3.1. On the basis of a complaint lodged by one Mani that on 25.6.2007 at about 3.00 p.m., when he was proceeding at the junction of North Usman Road and Parthasarathypuram with his mobile cart, the detenu threatened him at the knife point and forcibly took Rs.470/- from his shirt pocket and also threatened the public who came for his rescue that they would be killed and hurled the soda water bottles against them and made them to run on all sides seeking shelter resulting in traffic dislocation, the detenu was arrested and a case was registered in Crime No.394/2007 on the file of R4 Pondy Bazaar Police Station, for the offence punishable under Sections 341, 336, 427, 392 and 506(ii) IPC.

3.2. The second respondent, taking note of the above case as a ground case and two adverse cases pending against the detenu in Crime Nos.566/2007 on the file of R1 Mambalam Police Station for the offences punishable under Sections 341, 385 and 596(ii) IPC and 389/2007 on the file of R4 Pondy Bazaar Police Station for the offences punishable under Sections 341, 326 and 307 IPC and having satisfied that there is a compelling necessity to detain the detenu in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a Goonda.

4. The learned counsel for the petitioner challenges the impugned order of detention dated 17.7.2007 on the ground of non

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application of mind on the part of the detaining authority, as the detaining authority had not taken note of the fact that the specific plea raised by the detenu in his representation addressed to the Government dated 10.8.2007 that the detenu was taken by the police attached to R4 Pondy Bazaar Police Station on 23.6.2007 and not on 25.6.2007, as mentioned in the detention order, was not considered in the rejection order dated 24.8.2007.

5. We have perused the entire materials placed before us. Even though in the grounds of detention, it was stated that the detenu was arrested on 25.6.2007 with respect to the ground case, in the representation of the detenu dated 10.8.2007, he had specifically stated that he was taken on 23.6.2007 by the Police and was kept under their custody till 25.6.2007 and thereafter, a false case was foisted against him. However, the first respondent, while passing the order of rejection dated 24.8.2007 rejecting the representation of the detenu dated 10.8.2007, had not considered the contention raised by the detenu as to the arrest of the detenu.

6. We are, therefore, satisfied that the detaining authority had not taken note of the above fact, which shows the non application of mind on the part of the detaining authority. Accordingly, the order of detention dated 17.7.2007 is vitiated and the same is set aside. The detenu Sudalaimani is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

ATR

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government
   of Tamil Nadu
   Home, Prohibition and Excise Department
   Fort St. George, Chennai-600 009.

2. The Commissioner of Police
   Greater Chennai
   Office of the Commissioner of Police
   Egmore, Chennai.

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3. The Inspector of Police
   R-4 Pondy Bazaar Police Station
   Chennai.

4. The Superintendent
   Central Prison
   Puzhal, Chennai.

5. The Joint Secretary
   to the Government of Tamil Nadu,
   Public (Law and Order) Department,
   Fort St George, Chennai 9.

6. The Public Prosecutor
   High Court, Madras.

+ 1 cc to Mr. J. Divagar, Advocate SR No. 75761

NG(CO)
SR/7.1.2008

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